

CLOUD COMPUTING: REGULATORY & JURISDICTIONAL ISSUES

Rich Sauer

Associate General Counsel

Microsoft Corporation

Agenda

- What is “cloud computing” and its promised **benefits**?
- What are the regulatory and jurisdictional **challenges** re cloud computing that impede its widespread adoption?
- What are our proposed **solutions**?

What is “cloud computing”?

- Depends who you ask . . .
- Cloud computing provides software and computing power to users as a service, in a dynamic and scalable manner, over the Internet
- Many different “flavors” of cloud computing
 - Consumer vs. enterprise
 - Public, dedicated, or private cloud
 - Software as a service (SaaS), platform as a service (PaaS) or infrastructure as a service (IaaS)
- Benefits include:
 - More agility and scalability
 - Access from any device (PC, Phone, Multi-Function Devices, TV...)
 - Cost savings/efficiencies
 - New technologies available sooner
 - Access to unprecedented computing power
- Isn't this just outsourcing?

What are the regulatory and jurisdictional challenges re “the cloud”?

- In many respects, the policy issues are the same as those that have been addressed with online services over the past 15+ years.
- But as more data moves into the cloud, cracks in the framework, ambiguities in the law, and other policy challenges become more exposed.
- For instance . . .

➤ Data security

- What are the security risks (and benefits) of the cloud?
- Service provider practices
 - Does the service provider have a documented information security program, and what does it say?
 - What security certifications does the service provider have?
- What are the responsibilities of each party, e.g. in the event of a data breach?

➤ Data privacy vs. Law enforcement access

- What is the right balance between individual privacy rights and the need for government entities to catch criminals and terrorists?
- Should it make a difference if you store your data in your home or in the cloud?
- In the US, applicability of 4th Amendment to the cloud is unclear; similar issues arise internationally
- US jurisdictional reach (Bank of Nova Scotia) raises significant customer concerns

➤ Cross-border data flows

- Efficiencies and other benefits of cloud computing are best achieved when data can flow freely across borders
- Privacy laws that restrict such flows can be an impediment
 - European restrictions
 - Safe harbor, model clauses, binding corporate rules (BCRs)
 - Canadian provincial rules (e.g. FOIPPA in British Columbia) related to public sector data and other “blocking statutes.”

➤ Jurisdictional tensions

- Where is the data?
- Tensions created by different countries asserting jurisdiction over data
 - Tension between privacy rules requiring minimization and data retention obligations, esp. in Europe
 - Law enforcement access
 - Human rights concerns
- How much does the location of the data matter?

Proposed Solutions

- To realize the promise of cloud computing, we must address users' concerns that moving their personal data to the cloud might render it less secure and less private.
- We need to build confidence in the cloud.
- Some ideas for doing so . . .

➤ Self-Regulatory Initiatives

- Service provider approaches to cloud services that maximize user control and transparency:
 - Data export and portability
 - Transparency (and in some cases, choice) regarding geographic location of data
 - Software + services model vs. cloud-only offerings
 - Transparency and choice for any secondary uses of data (e.g., targeted advertising, operating vs. improving the service)
 - Global Network Initiative
(www.globalnetworkinitiative.org)

➤ Improved user education and awareness

Questions to ask a cloud service provider:

- What is the provider's policies regarding data usage?
- What are the companies security practices and what certifications does it have?
- Where are the data centers in which the data will be stored?
- What controls and choices are available?

➤ A call for government action

- ECPA Modernization and Reform
 - Your data at stored in the cloud should receive the same protections as your data stored at home
- Cloud Computing Advancement Act
 - CFAA amendments to increase penalties for malicious hacking
 - Private right of action for cloud service providers
 - Adequate law enforcement resources and training
 - Truth in Cloud Computing principles
- Promote Common Approaches to Jurisdiction
 - Need for greater bilateral and multilateral engagement by governments

Cloud Policy Resources

- Microsoft resources re cloud privacy at:
<http://www.microsoft.com/privacy/cloudcomputing.aspx>
- Microsoft resources re cloud policy at:
<http://www.microsoft.com/presspass/presskits/cloudpolicy/>
- Microsoft resources re cloud services:
<http://www.microsoft.com/cloud>

Microsoft[®]